IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3442 OF 2006.

1. Shri Kini Kishor Shah
Aged 31 yrs., residing at
2, Jyoti Sadan, Ground floor,
Gulmohar, 10th Road, JVPD
Scheme, Mumbai 400 049.

2. Smt.Nirmala Kishore Shah,
Aged: 60 yrs., residing at
2, Jyoti Sadan, Ground floor,
Gulmohar, 10th Road, JVPD
Scheme, Mumbai 400 049. ... Applicants.

Versus.

1. State of Maharashtra

2. Smt.Aarti Kini Shah,
Aged 30 yrs., residing at
10, Govardhan Bhuvan, Jai
Hind Society, N.S.Road, 12-A,
JVPD Scheme, Mulund 400 049. ... Respondents.

Shri Amit Pujari for the Applicants.

Shri A.S.Shitole, A.P.P. for the Respondent No.1-State.

Ms.Supriya Gaonkar for Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 13th October, 2006.

ORAL JUDGMENT.:

1. Rule. the Advocate for the Respondents waive service. The second Respondent has filed an affidavit which is taken on record.

2. The 2nd Respondent lodged the F.I.R. alleging commission of offence under section 498A read with

section 34 of the Indian Penal Code against the Petitioner. There was a matrimonial dispute between the 1st Petitioner and the 2nd Respondent. It is stated in the petition that the matrimonial dispute has ended and by filing a joint petition, the parties have obtained divorce by mutual consent under section 13B of the Hindu Marriage Act, 1955. The prayer in this application is for quashing the FIR and the proceedings of the Criminal Case on the basis of the said F.I.R.

3. The 2nd Respondent has an affidavit. Paragraphs 2 and 3 of the said affidavit read thus:

> 2. I say that I had filed a petition for divorce in the Hon'ble Family Court at Bandra being M.J.Petition No.A-275/2006. I further say that subsequently the said petition was converted into a joint petition for divorce by mutual consent under section 13(B) of the Hindu Marriage Act, 1955 wherein consent terms have been filed by the parties and the Hon'ble Family Court was pleased to pass an order declaring that the marriage between myself and Applicant No.1 stands dissolved by a decree of divorce with mutual consent with effect from 07/09/2006 subject to the terms for divorce spelt out in the consent terms.

3. I say that hence pursuant to the said consent terms, I have no grievance against any of the Applicants and I have no objection if this application is allowed and the FIR registered vide C.R.No.265/2005 with Juhu Police Station, Mumbai and all the investigations made pursuant to the same and the proceedings in C.R.No.4754/PW/05 pending before the Ld.Metropolitan Magistrate's 22nd Court at Andheri is quashed."

3. It is obvious that the F.I.R. was lodged as a result of the matrimonial dispute between the 1st Applicant and the 2nd Respondent. Considering the overall settlement between the parties, it is obvious that the continuation of the criminal proceedings will cause harassment to both the parties. Hence a case is made out for exercising the power under section 482 of the said Code. Accordingly rule is made absolute in terms of prayer clause (a).

Judge.